

Applicant: Drew Heimer
Application Serial No.: 09/884,362
Filing Date: June 18, 2001
Docket No.: 1161-37
Page 2

REMARKS

Independent claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,655,065 to Yellin. This determination is respectfully traversed.

As a preliminary matter, applicant wishes to note that the Yellin reference is a new grounds of rejection. The Examiner, in the above-referenced Office Action, states that in making this Office Action final, Applicant's Amendment necessitated the new grounds of rejection. Applicant respectfully disagrees with the Examiner that Applicant's amendment necessitated the new grounds of rejection and requests the withdrawal of the finality of the rejection.

Claim 1 is presently rejected in view of the new reference under 35 U.S.C. §102(b). As the Examiner knows, in order to maintain an anticipation rejection, the Examiner must contend that each and every element of claim 1 is shown in the Yellin reference. Since the previous amendment made to claim 1 added limitations to claim 1, by definition, Yellin should have also anticipated original claim 1, since amended claim 1 includes all the limitations of original claim 1. Therefore, if the Examiner was aware of the Yellin reference, it should have been applied against the original claims in the first Office Action. If the Examiner only recently uncovered Yellin, it could not have been as a result of the added limitations since the present claim 1 includes all of the limitations of original claim 1. Therefore, we submit that the final rejection is

Applicant: Drew Heimer
Application Serial No.: 09/884,362
Filing Date: June 18, 2001
Docket No.: 1161-37
Page 3

improper, as the new grounds of rejection is not based on Applicant's amendment. Withdrawal of the final rejection and reconsideration is respectfully requested.

Turning now to the substantive rejection based on Yellin, as noted above, in order for a reference to be anticipatory, the reference must show within its four corners each of the elements set forth in the claims. Yellin is directed to a modularly stackable cube structure. The stackable cube structure of Yellin is a six-sided device having five enclosed sides including the side that is used for stacking. Claim 1 specifically recites a molded plastic module having an open end and means for stackably interconnecting one module to another such that the base of one module closes the open end of the other module.

With reference to Figure 2 of Yellin, it is noted that at the stacking location of the vertically stacked module, a double wall is provided, one by the lower wall of the upper module, and second by the upper wall of the lower module. Thus, the upper module does not close the open end of the lower module as the lower module does not have an upper open end. Therefore, as a matter of law, Yellin cannot be anticipatory of claim 1 of the present invention.

Claim 1 further stands rejected under 35 U.S.C. §103 as being obvious in view of U.S. Patent No. 5,403,679 to Stone. This determination is respectfully traversed.

Applicant: Drew Heimer
Application Serial No.: 09/884,362
Filing Date: June 18, 2001
Docket No.: 1161-37
Page 4

The Examiner has evidently removed the anticipation rejection based on Stone. The Examiner acknowledges that Stone fails to show "the particular make up of the modules".

As previously argued, Stone shows a double wall construction similar to that of Yellin. The Examiner contends that due to the "comprising" language used in the claims, the open upper end does not distinguish the present invention over Stone. Applicant respectfully disagrees with the Examiner's position. Quite simply, Stone has no open upper end in its module. The module of Stone cannot be defined until it is completely assembled. The mere fact that the language of claim 1 is comprising and could include other elements does not mean that claim 1 could be read to have an enclosed open end in its module. The module of claim 1 is defined to include an open upper end. Stone fails to show such an arrangement. Moreover, there is nothing to suggest that the Stone module can be used without its open upper end. Therefore, not only does Stone fail to anticipate the claims of the present invention, claim 1 is not obvious in view of Stone.

The Examiner is failing to consider a significant limitation of claim 1, namely the open upper end of the individual module. Whether Stone shows more elements than those claimed is irrelevant. What is more significant is what Stone does not show. Stone fails to show, in any respect, a module having an open upper end. It is, therefore, respectfully submitted that claim 1 is patenably distinct over Stone.

Applicant: Drew Heimer
Application Serial No.: 09/884,362
Filing Date: June 18, 2001
Docket No.: 1161-37
Page 5

Claim 1 is further rejected under 35 U.S.C. §103 as being unpatentable over Yellin in view of U.S. Patent No. 5,403,679 to Stone and U.S. Patent No. 6,521,371 to Lavanture.

The deficiencies of the Yellin reference are set forth above. The Examiner attempts to combine the Stone '679 teaching with Yellin. However, the Stone '679 shows a modular battery assembly having a perimetrical structure which supports batteries around the perimeter of the structure. Stone '679 is a completely different structure from that of the claimed invention. Stone fails to show any base which supports a plurality of batteries thereacross. That is the entire purpose of the stackable arrangement of the present invention and, moreover, the need for the open upper end. The module of the present invention allows for the support and positioning of cells across the base. The open upper end is provided so that when the modules are stacked directly over the supported cells only a single wall thickness exists therebetween. Stone '679 fails to address this problem inasmuch as the batteries are supported about a perimetrical rim of the cabinet. Accordingly, the present invention is patentably distinct over the combination of Yellin and Stone.

Lavanture simply shows a battery holding plate and fails, in any respect, to show significant elements of the claimed invention including a module for stackability. Therefore, Lavanture is deficient in adding to the above-referenced combination. The claims of the present

Applicant: Drew Heimer
Application Serial No.: 09/884,362
Filing Date: June 18, 2001
Docket No.: 1161-37
Page 6

invention are, therefore, believed to be patentably distinct over the combination of Yellin, Stone '679 and Lavanture.

The Examiner has rejected independent claim 1 under 35 U.S.C. §103 as being obvious over Yellin in view of Lavanture '371. In applying Yellin now in combination with Lavanture, the Examiner appears to indicate that, in fact, Yellin does not anticipate claim 1. Applicant agrees.

As noted above, Yellin fails to show an open ended module for stackability. There is no suggestion within Yellin that such an open ended feature can be provided. In fact, Yellin shows only a covered module. Moreover, the stackability of Yellin requires the use of the top surface to interlock with an oppositely positioned bottom surface. Therefore, not only does Yellin fail to suggest an open ended module, Yellin specifically teaches away therefrom. The Lavanture plate fails to fill this deficiency. As such, claim 1 of the present invention is believed to be patentably distinct over the cited combination.

Having responded in full to the present Office Action, it is respectfully submitted that withdrawal of the finality of the rejection is warranted and that independent claim 1 together

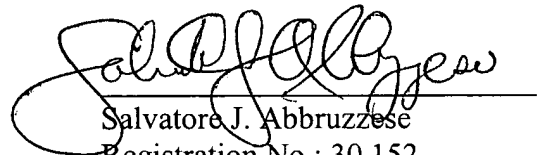
Applicant: Drew Heimer
Application Serial No.: 09/884,362
Filing Date: June 18, 2001
Docket No.: 1161-37
Page 7

with claims 2-12 which depend therefrom are patentably distinct over the references of record.

Entry of this Office Action and reconsideration is respectfully requested.

Should the Examiner have any questions regarding this response or wish to discuss this matter in further detail, please contact the undersigned attorney.

Respectfully submitted,



Salvatore J. Abbruzzese
Registration No.: 30,152
Attorney for Applicant(s)

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700